IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 722 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF B J BHATT

Versus

STATE OF GUJARAT

Appearance:

1. First Appeal No. 722 of 1986
MR PV HATHI for Petitioner No. 1,1/1-1/4-1/4
MR MR MENGDEY Ld.AGP for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.S.SHAH

Date of decision: 09/05/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under Section 96 of the Civil Procedure Code is directed against the judgement and decree dated 30.9.1985 in Special Civil Suit No.42 of 1984 by the learned Civil Judge (S.D.), Porbandar, dismissing the suit of the plaintiff whereby the plaintiff prayed for the relief of declaration that the order for recovering the suit amount is illegal, unconstitutional, against the principles of natural justice, unauthorized and liable to be set aside, and for consequential relief of permanent injunction restraining the defendant from recovering any amount from the plaintiff pursuant to the said order or orders.

2. In the suit, the plaintiff (since deceased) inter alia contended that he was serving as a Alopethic Compounder in the dispensary of the ESI Corporation since 1971; that he was given additional charge of stores for other two dispensaries; that during the period he was in charge of the stores of medicines, some stock of medicines was found in short supply; that the defendant's officer on inquiry found that the plaintiff was responsible for the said shortage of medicines and, therefore, he was required to make that loss good to the respondent State; that the defendant's officer held that the shortage came to the tune of Rs.1,48,933.61 paise; and ultimately the Director of the ESI Corporation made an order to recover the said amount from the appellant original plaintiff from his salary.

3. The respondent - original defendant filed written statement at Exh.28 and resisted the claim of the plaintiff. That during the trial, neither side led any oral evidence in view of the admitted position. The trial Judge dismissed the suit of the appellant original plaintiff for the aforesaid reliefs vide judgement and decree dated 30.9.1985 which is assailed in the present appeal.

4. The R & P of the case has been placed before us. We have perused the same.

5. It is submitted by Mr.P.V.Hathi, learned counsel for the appellant - plaintiff that the appellant (since deceased) was a compounder in charge of 3 dispensaries; that no opportunity was given to the plaintiff before taking a final decision in the matter; that no notice before issuing the recovery, was given to the plaintiff; that in the impugned judgement, no distinction is made

between first liability of Rs.12,106.48 paise and the second liability of Rs.1,48,933.61 paise.

6. It is submitted by Mr. M.R.Mengde, learned AGP for respondent that as far as the liability of Rs.12,106.48 paise is concerned, the plaintiff has admitted his liability and has also paid some installments towards the payment of this amount and, therefore, there is no question of not giving any opportunity to the plaintiff for the recovery of this amount. It is further stated that as far as the recovery of Rs.1,48,933.61 paise is concerned, before calling upon the plaintiff to pay the said amount the plaintiff was not called upon to show cause as to why this amount should not be recovered from him being the amount of loss / deficit medicine in the store.

7. It is not in dispute that the plaintiff was serving as a Alopethic Compounder in the defendant's dispensary and the plaintiff being the compounder was responsible for the stock of the medicines which were stored in the dispensary where he was working as the compounder. It is also not disputed that there are 3 dispensaries at different places in charge of the plaintiff. Exh.30 dated 30.12.1981 suggests that Rs.1,48,933.61 paise was found recoverable from the plaintiff being the value of the deficit stock of the medicines which was in charge of the plaintiff. Exh.30 also suggests that plaintiff was directed to deposit the said amount in Government treasury through Chalan and also requiring the plaintiff to produce the original Chalan in the concerned office. Exh.30 further suggests that the plaintiff was not maintaining the account as per the Rules and was negligent in maintaining the account of the medicines which caused loss to the Government to the tune of Rs.1,48,933.61 paise (in the section / department of the plaintiff) which is a serious matter and for which departmental action and other necessary action would be taken against the plaintiff including the police action, and by the said letter the plaintiff was directed to deposit the amount. Thus, vide Exh.30 the plaintiff was directed to deposit the amount of Rs.1,48,933.61 paise being the value of deficit stock of medicines causing loss to the Government.

8. It will be seen that what is alleged against the plaintiff is the loss caused to the Government on account of the shortage of medicine in the store valuing Rs.1,48,933.61 paise, further alleging that the plaintiff did not maintain the accounts as per the Rules and was negligent in keeping the accounts of the stock of the

medicines and to make good this pecuniary loss caused to the Government the plaintiff has been served with direction / order Exh.30.

9. Rule-6 of the Gujarat Civil Services (Discipline and Appeal) Rules,1971 deals with the nature of penalty. It provides that without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any member of the State, Subordinate or Inferior Service namely :

Minor Penalties
(1) .....
(2) .....
(3) Recovery from his pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

Major Penalties

(4) ....
(5) ....
(6) ....
(7) ....
(8) ....

As seen above, in the instant case, recovery of Rs.1,48,933.61 paise is sought to be enforced against the plaintiff vide Exh.30. It is not the say of the defendant that after the stock of medicines valuing Rs.1,48,933.61 paise was found short / deficient on verification of the stock, the plaintiff was asked to explain as to why the amount of Rs.1,48,933.61 paise being the value of missing / shortage in stock of medicines, be not recovered from him. It may be appreciated, which is not disputed also, that on the first verification the stock was found short to the tune of Rs.12,106.48 paise and as per the written statement of the defendant, the plaintiff vide his letter dated 15.12.1981 agreed to pay the amount by installments of Rs.50/- as the amount involved was a substantial one, and that the plaintiff paid first installment on 5.11.1981 and continued to pay instalment at Rs.50/-. The plaintiff has never entered the witness box and denied this fact. From this it can be said that the plaintiff admitted the liability to pay Rs.12,106.48 paise. The learned trial Judge in the impugned judgement has not differentiated the two liabilities viz. to pay Rs.12,106.48 paise and the liability to pay an amount of Rs.1,48,933.61 paise as per Exh.30. It is true that as

far as the liability to pay Rs.12,106.48 paise is concerned, the plaintiff by his letter dated 15.12.1981 admitted the liability to pay this amount in the installments of Rs.50/- and paid first installment on 15.11.1981 and thereafter, continued to pay Rs.50/- by way of installment towards the payment of Rs.12,106.48 paise. But this cannot be construed to mean that the plaintiff admitted the liability to pay Rs.1,48,933.61 paise sought to be recovered vide Exh.30. There is nothing to show on record that the plaintiff, at any point of time, admitted the liability to pay Rs.1,48,933.61 paise demanded vide Exh.30. Now, simply because on the earlier occasion the plaintiff agreed to pay Rs.12,106.48 paise being the value of the deficit stock of medicine that would not necessarily mean that the plaintiff also admitted to pay Rs.1,48,933.61 paise directed to be paid vide Exh.30. There is absolutely no evidence to show that after the stock of medicines valuing Rs.1,48,933.61 paise was found deficit / short or missing on verification the plaintiff was called upon to explain as to why Rs.1,48,933.61 paise being the value of the deficit / missing stock of medicines which was in his charge should not be recovered from him. The recovery of any pecuniary loss, caused to the Government by negligence or for any reason, from the employee would be a minor penalty as per Rule-6 reproduce above. It need hardly be said that before imposing penalty of recovery of any pecuniary loss caused to the Government by negligence or for breach of orders, the concerned Government employee should be afforded a reasonable opportunity of explaining as to why the recovery should not be enforced against him by adhering to the principles of natural justice. In the instant case, there is total non-observance of the principles of natural justice inasmuch as the plaintiff has never been served with any notice to show cause / explain as to why the pecuniary loss of Rs.1,48,933.61 paise caused to the Government because of the negligence of the plaintiff should not be recovered from the plaintiff.

10. In the case of Laxman Popatbhai Solanki Vs. State of Gujarat and Another, VXII GLR 370 while considering Article 19(1)(f) and 31(1) of the Constitution of India in the petition under Articles 226 and 227 of the Constitution, it has been held by the Division Bench of this Court that, "the claim to pension is property within the meaning of Article 19(1)(f) and 31(1) and the order forfeiting pension and gratuity must be a reasoned and speaking order requiring the principles of natural justice to be followed".

11. In the instant case, the action of the respondent requiring the plaintiff to pay / deposit an amount of Rs.1,48,933.61 paise being the pecuniary loss caused to the Government on account of negligence of the plaintiff vide order dated 30.12.1981 (Exh.30) is illegal and liable to be quashed and the appeal required to be partly allowed to this extent setting aside the impugned judgement and decree accordingly.

12. In the result, the appeal is partly allowed setting aside the impugned judgement and decree to the extent that the action / orders of the defendant for the recovery of Rs.1,48,933.61 paise being against the principles of natural justice are illegal, unauthorized, inoperative and the defendant its servants and agents etc. are restrained from enforcing, implementing and/or executing the Office Order / Direction No.KR LC/D1PBR/SVP/77 to 80/1325-24/81 dated 30.12.1981 issued by the Administrative Medical Officer for the recovery of Rs.1,48,933.61 paise. The decree of the trial Court is substituted by the said decree.

13. Since the original plaintiff has died during the pendency of this appeal and his legal representatives have been brought on record, there is no question of directing departmental inquiry for the pecuniary loss caused to the respondent - State. No order as to costs.

(N.G.Nandi,J)

(M.S.Shah,J.)

(vipul)